

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Appropriate Framework for Broadband)	
Access to the Internet over Wireline Facilities)	CC Docket No. 02-33
)	
Universal Service Obligations of Broadband)	
Providers)	
)	
Computer III Further Remand Proceedings:)	
Bell Operating Company Provision of)	
Enhanced Services; 1998 Biennial Regulatory)	CC Docket Nos. 95-20, 98-10
Review -- Review of Computer III and ONA)	
Safeguards and Requirements)	
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REPLY COMMENTS OF SPRINT CORPORATION

Michael B. Fingerhut
Richard Juhnke
Jay C. Keithley

401 9th Street NW, Suite 400
Washington, D.C. 20004
(202) 585-1909

Its Attorneys

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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION AND SUMMARY.....	1
II. THE RBOCS DO NOT PROVIDE ANY EVIDENCE TO SUPPORT THE NOTION THAT TITLE II REGULATION INHIBITS INVESTMENT IN AND DEPLOYMENT OF BROADBAND FACILITIES.....	4
III. CONTINUED APPLICATION OF THE COMPUTER INQUIRY SAFEGUARDS IS NECESSARY TO REDUCE, IF NOT ELIMINATE, DISPUTES OVER THE RBOCS' RESPONSIBILITIES UNDER SECTION 251 OF THE ACT.....	6
IV. THE COMMISSION'S RECENT <i>CABLE MODEM ORDER</i> DOES NOT JUSTIFY SCRAPPING THE <i>COMPUTER INQUIRY</i> SAFEGUARDS.....	9
V. THE RBOC CLAIM THAT THEIR PROVISION OF STANDALONE BROADBAND TRANSMISSION CAPACITY IS PRIVATE CARRIAGE CANNOT WITHSTAND SCRUTINY.....	14
VI. CONCLUSION.....	17

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REPLY COMMENTS OF SPRINT CORPORATION

Sprint Corporation ("Sprint") on behalf of its incumbent local exchange ("ILEC"), competitive LEC ("CLEC")/long distance and wireless subsidiaries, hereby respectfully submits its reply to the comments submitted in response to the Commission's *Notice of Proposed Rulemaking* ("NPRM"), FCC 02-42 issued February 15, 2002, in the above-captioned proceeding.

I. INTRODUCTION AND SUMMARY.

Given the myriad of diverse interests that exist within the broad telecommunications sector of the national economy, it is relatively rare that in a major rulemaking proceeding the overwhelming number of commenting parties representing those interests would agree that the Commission's proposals being considered in the rulemaking are contrary to fact, law and the

public interest.¹ Such is the case, here and the near unanimity of opinion is undoubtedly due, in large measure, to the fact that the Commission has for the first time, to Sprint's knowledge, instituted a rulemaking proceeding in which the ultimate issue is whether to eliminate Title II regulation of bottleneck "last-mile" common carrier facilities. *See* WorldCom/Comptel/ALTS at 2 ("...the FCC has convened one of the most startling rulemaking proceedings in its 68-year history"). These parties recognize that competition in all telecommunications markets, that national security and emergency preparedness, and that the important access goals for Americans with disabilities embodied Section 255 would all be imperiled should the Commission decide, contrary to fact, law and the public interest, to adopt its radical suggestion to eliminate Title II regulation of the ILECs' bottleneck last mile loops simply because such loops are xDSL-capable and are now mainly being used to provide Internet access and perhaps other information services to end users.

About the only parties not to share the view that the elimination of common carrier regulation being considered here would be as unwise as it is unjustified are the Regional Bell Operating Companies ("RBOCs").² But the RBOCs' arguments are devoid of factual substance;

¹ These parties include individual citizens writing one or two page letters; ISPs ranging from those serving a few thousand customers to AOL Time Warner as well as and various ISP associations; non-profit organizations; State regulatory commissions; State Consumer Advocates; non-RBOC ILECs such as Sprint and associations representing the interests of small to mid-size ILECs, especially rural ILECs; CLECs and the CLECs' association ALTS; providers of high speed telecommunications services, *e.g.*, Covad, DSLNet; and virtually all IXC's either in separate comments, *e.g.*, Sprint, AT&T and WorldCom or as part of their industry associations, *e.g.* Comptel and ASCENT.

² The United States Telecom Association ("USTA") which represents many but not all of the incumbent local exchange carriers (ILECs), but which is effectively controlled by the RBOCs, also unsurprisingly endorses the elimination of Title II regulation of the ILECs' bottleneck last mile facilities.

misinterpret the Act and legal precedent; and are contrary to the public interest.

Below, Sprint discusses the several flaws inherent in the RBOCs' arguments. Sprint demonstrates that the RBOCs' claim that Title II regulation has all but eliminated their incentive to invest in broadband infrastructure has no basis in fact; that, despite what the RBOCs are telling the Commission in their Comments, elimination of *Computer Inquiry* safeguards will seriously jeopardize the ability of carriers to secure access to the RBOCs' broadband-enabled last mile transmission facilities so as to provide needed intramodal competition to the RBOCs; that, contrary to the RBOCs' argument, Section 706 of the 1996 Telecommunications Act does not require that the Commission regulate cable modem service and broadband Internet access service in an identical manner; and, that the private carriage arguments of the RBOCs are totally without merit.

Given such flaws, the only legally sustainable outcome of this proceeding is for the Commission to simply re-affirm that the continued applicability of the *Computer Inquiry* regulatory structure to the ILECs' provision of broadband transmission facilities used to provide information services is the only way to fulfill the over-arching goal of the Act to enable competition across all telecommunications markets. As stated in its Initial Comments (at 2), Sprint has "no quarrel with the Commission's tentative conclusion that 'the provision of wireline broadband Internet access service is an information service'. *NPRM* at ¶17." But affirmation of the *Computer Inquiry* decisions will mean that these carriers must unbundle their basic common carrier wireline broadband transmission facilities from their information services and offer the transmission capacity on a standalone basis to other information service providers (ISPs) "under

the same tariffed terms and conditions under which they provide such services to their own [information] service operations."³

II. THE RBOCS DO NOT PROVIDE ANY EVIDENCE TO SUPPORT THE NOTION THAT TITLE II REGULATION INHIBITS INVESTMENT IN AND DEPLOYMENT OF BROADBAND FACILITIES.

The RBOCs claim that Title II regulation, including the Commission requirements adopted pursuant to Section 251 of the Act as well as the Commission's policies adopted in *Computer II* and *Computer III*, have all but eliminated their incentive to invest in and deploy broadband facilities and services. BellSouth (at 5), for example, advances the notion that the "[u]nbundling of ILEC facilities and giving them away at TELRIC-based prices...will assure very limited deployment of [broadband facilities] by LECs and CLECs." SBC (at 26) argues that that the "*Computer Inquiry* service unbundling requirements are [] a drag on the development of new and innovative ways of provisioning broadband Internet access services." And, Verizon (at 26) claims that by doing away with the "*Computer Inquiry* regime, the Commission will remove a significant hindrance to development and deployment of important new broadband technologies and applications." However, the RBOCs do not support such claims with any

³ *Independent Data Communications Manufacturers Association, Inc., Petition for Declaratory Ruling*, 10 FCC Rcd 13717, 13719 (¶13) (1995) (*Frame Relay Order*). See also *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 13 FCC Rcd 24011, 24030 (¶36) (1998) (*Advanced Services Decision*) where the Commission stated that while the ILEC-provided xDSL-enabled "transparent, unenhanced, transmission path" may be utilized by end users together with an information service such as Internet access, consistent with the *Computer II* regulatory paradigm, the Commission must "treat the two services separately: the first service is a telecommunications service...and the second service is an information service...."

facts.⁴ Indeed, it would be difficult, if not impossible, for them to supply such information. This is so because RBOC decisions to deploy or not to deploy broadband facilities are based on marketplace facts and not on Commission regulation. *See, e.g.*, Sprint (at 5-10), AT&T (at 62-72), WorldCom/Comptel/ALTS (at 39-41), Time Warner Telecom (at 5-9) and Covad (at 8-13). Thus, when confronted with the need to respond to cable modem services being offered by cable companies to residential customers and to the xDSL-based services offered by data CLECs to business customers, the RBOCs began to deploy xDSL services at a rapid clip, notwithstanding the unbundling obligations of *Computer II* or TELRIC pricing requirements. Covad at 33. The RBOCs are now the dominant providers of xDSL-based services. *See e.g.*, WorldCom/Comptel/ALTS at 40 and AT&T at 67. The elimination of the *Computer Inquiry* safeguards will not only solidify the RBOCs dominance but could also lead to an ILEC-monopoly in the provision of wireline broadband services, including both information services and eventually telecommunications services, since all current and potential wireline competitors must have access to the RBOCs' (and other ILECs') last-mile bottleneck facilities if end-users are to be given a choice of the broadband service providers. Such an outcome is simply not in the public interest.

⁴ The RBOCs' inability to provide factual data to show that their "no investment incentive" rhetoric is based on marketplace reality appears to be fairly typical. Certainly, they did not persuade the Supreme Court in *Verizon, et al. v. FCC, et al.*, No. 00-511 *et al.*, that TELRIC pricing does not stimulate infrastructure investment. The Supreme Court refused to be taken in by the RBOCs' speculative argument, holding that "at the end of the day" and "theory aside" the RBOCs' position "founders on fact." *Slip op.* at 45 (May 13, 2002). Given that the RBOCs' position regarding broadband deployment similarly "founders on fact," the Commission should, at long last "put theory aside" and inform the RBOCs that Commission policy cannot be based on speculation.

III. CONTINUED APPLICATION OF THE COMPUTER INQUIRY SAFEGUARDS IS NECESSARY TO REDUCE, IF NOT ELIMINATE, DISPUTES OVER THE RBOCs' RESPONSIBILITIES UNDER SECTION 251 OF THE ACT.

The RBOCs would have the Commission ignore such untoward results at least with respect to the provision of Internet access services. They tell the Commission that they have no incentive to require end-users who subscribe to their broadband services to use the Internet access services of their ISP-affiliate and claim that they will allow end users the ability to choose their own ISPs. Indeed, SBC alleges (at 28) that it "currently does business with hundreds of ISPs" and "it has no desire to discontinue those business relationships." *See also* Verizon at 31 and Qwest at 29. Of course, the RBOCs are required by the unbundling and nondiscrimination requirements of *Computer Inquiry* to "do business" with unaffiliated ISPs, although as set forth in comments by the American ISP Association (at 1), it appears that despite these requirements the RBOCs "have successfully locked America's ISPs out of the broadband portion of the nation's public phone networks by a combination of pricing and provisioning discrimination."⁵ Thus, the fact that SBC or any RBOC currently provides access to unaffiliated ISPs has no predictive value in determining whether the RBOCs will continue to "do business" with unaffiliated ISPs if, contrary to the public interest, the Commission were to exempt the ILECs' provision of broadband Internet access services from the *Computer Inquiry* safeguards.

Even if the RBOCs were willing to continue to "do business" with unaffiliated ISPs, there is absolutely no assurance that the prices the RBOCs would charge such ISPs would be

⁵ It has been widely documented that the RBOCs would rather pay millions of dollars in fines for failing to comply with Commission or State policies designed to enable competition than cede any part of their bottleneck control of last mile access to end users. *See*, Covad at 26-32.

reasonable. Certainly, basic economics teaches that an entity that exercises bottleneck control over an essential input has the ability and the incentive to set its prices for access to such input either to reap monopoly rents or to exclude competitors to the entity's own service. The RBOCs' own comments suggest that they will exploit their bottleneck last mile facilities in such manner. For example, SBC (at 15) argues without any support whatsoever that it is costly for a wireline carrier to provision its broadband facilities to provide "Internet connectivity in a multiple ISP environment" and goes on to tell the Commission (at 28) that once freed from the *Computer Inquiry* safeguards, it will be able to re-structure its business relationships with unaffiliated ISPs. Qwest (at 28) also suggests that end users will have to pay more than the rates charged by the RBOCs for xDSL Internet access service to the RBOCs' affiliated ISPs if they wanted to access non-RBOC-affiliated ISPs of their own choosing. The ability of an entity to raise rivals' costs or exclude them from the marketplace is the essence of market power exploitation. The Commission's *Computer Inquiry* safeguards were designed to enable the Commission to prevent the exercise of such anticompetitive behavior and ensure that all enhanced service providers had non-discriminatory access to basic transmission facilities, 77 FCC 2d at 474-475 (¶231). For this reason alone, such safeguards should not -- indeed, consistent with Commission's statutory mandate to enable competition, cannot -- be eliminated.

Moreover, continuation of the *Computer Inquiry* unbundling and nondiscrimination safeguards is necessary to eliminate any controversy as to whether all carriers will continue to be able to secure access to the RBOCs' broadband-enabled last mile transmission facilities so as to provide needed intramodal competition to the RBOCs. Currently, under Section 251(c) of the Act, carriers are entitled to obtain such transmission facilities either on an unbundled basis at rates that are just, reasonable and nondiscriminatory or on a resale basis at wholesale rates.

Several commenting parties have explained, with considerable force, that even if the RBOCs used their broadband-enabled bottleneck facilities to provide only Internet access service, carriers would still be able to obtain such facilities on an unbundled basis under Section 251(c)(3). See, *e.g.*, AT&T at 29-40, Covad at 78-84, WorldCom/Comptel/ALTS at 72-78.

SBC and Verizon take the different view. They insist that a finding that a broadband transmission facilities used to provide broadband information service are not a telecommunications service, coupled with the rescission of the *Computer Inquiry* requirement that such transmission facilities be unbundled and offered on a standalone basis pursuant to tariff, eliminates their obligations under Section 251(c) of the Act. SBC at 31-32; Verizon at 32-34.

Plainly, this disagreement will lead to more court litigation and create more regulatory uncertainty within the industry. And regulatory uncertainty discourages capital investment by CLECs (in an already difficult time) which, in turn, will inhibit competition in the provision of broadband services contrary to the goals of this rulemaking and the Communications Act. See Time Warner Telecom at 7-8. See also Letter dated June 10, 2002 from the Honorable Robert H. Bork to Chairman Michael Powell at 2 (Regulatory uncertainty makes it "difficult for new entrants to develop business plans that rely on the availability of a particular network element in a particular location."). Sprint strongly believes that the only way to forestall such controversies is to make clear that while the use of broadband transmission facilities to provide Internet access is an information service, such transmission facilities must be unbundled and offered on a standalone basis under Title II. Stated differently, the Commission should simply re-affirm that

the *Computer Inquiry* safeguards continue to apply to the provision of broadband transmission facilities used to provide information services.⁶

IV. THE COMMISSION'S RECENT *CABLE MODEM ORDER* DOES NOT JUSTIFY SCRAPPING THE *COMPUTER INQUIRY* SAFEGUARDS.

All of the RBOCs invoke, in talisman-like fashion, the concept of regulatory parity to argue that they should be exempt from the safeguards established in *Computer Inquiry* when providing information services, including Internet access services, over basic broadband transmission facilities. *See generally*, BellSouth at 12-15; Qwest at 29; SBC, 8-11; and Verizon at 36. Verizon goes further and calls for the elimination of Title II regulation of all broadband facilities regardless of whether such facilities are used in the provision of an information service or used by the customer on a standalone basis as a transparent transmission path for the movement of customer-supplied information without change to the form or content of such information. Thus, Verizon would have the Commission define a broadband service as "*either* a service that uses a packet-switched or successor technology *or* a service that includes the capability of transmitting information that is generally not less than 200 kbps in both directions." Verizon at 5 (emphasis in original). Verizon concedes that this definition would include services such as frame relay which are unquestionably common carrier services. *Id.* at 6. SBC also appears to suggest that the Commission should deregulate all broadband services including those

⁶ SBC (at 20) and Verizon (at 34-35) argue that the *Computer Inquiry* safeguards have no relevance in today's telecommunications marketplace. But their arguments in this regard simply parrot the *NPRM's* view that such safeguards were adopted for narrowband applications then being offered. As Sprint (at 13-15) and others have shown, *see e.g.*, AT&T at 52-54, WorldCom/Comptel/ALTS at 47-52, there is nothing in the *Computer Inquiry* decisions to support such a narrow view.

provided to large businesses. SBC at 23-24.

The primary basis for the RBOCs' regulatory parity argument is Section 706 of the Act which they claim sets forth a specific Congressional mandate that the Commission must treat all providers of similar services the same. *See e.g.*, SBC at 11; Verizon at 23. Thus, or so the RBOCs' argument goes, since the Commission decided to exempt cable modem service from the *Computer Inquiry* regulatory structure, the Commission must abolish the safeguards established in its *Computer Inquiry* decisions for wireline carriers.

Of course, by adopting its tentative conclusion that "the provision of wireline broadband Internet access service is an information service," *NPRM* at ¶17, the Commission will establish regulatory parity with respect to retail offerings of such information service as between ILECs and cable companies whose cable modem Internet access service is also classified as a information service. Moreover, although Sprint does not concede that the Commission has a statutory duty to do so, the Commission may well determine, at some point in the future, that it is necessary to further rationalize its regulation of the disparate entities within its jurisdiction.⁷ However, the RBOCs' reliance on Section 706 to argue that the Commission is required to apply its findings in the *Cable Modem Order* to the RBOCs' provision of wireline broadband services is passing strange. The Act subjects different industry segments, *e.g.*, telephony and cable,

⁷ Currently cable companies providing telephony services over the cable plant must meet all applicable requirements of Title II with respect to those services. *See, e.g., Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Telecommunications Inc, Transferor to AT&T Corp., Transferee*, 14 FCC Rcd 3160, 3190 (1999). Sprint would note that because the Commission is still considering the appropriate regulatory structure for cable modem service, it is as premature as it is incorrect for the RBOCs to claim that there is no regulatory parity between their provision of wireline broadband Internet access service and cable modem service provided by cable companies.

wireless and wireline, to different regulatory schemes, and there is no language in Section 706, which is but a footnote to Section 7 of the Act, 47 USC §157, that even remotely suggests that Congress intended to amend those schemes to require that the Commission regulate all of these diverse entities in an identical manner when they are providing broadband services.

The RBOCs do not point to any language in Section 706 that unequivocally sets forth such a requirement. Rather, their claim here rests on the notion that Congress implanted a "regulatory parity" requirement in the definition of the term "advanced telecommunications capability." In particular, they argue that because this capability is defined "without regard to any transmission media or technology," the Commission is required to regulate all providers of broadband services in an identical manner. *See e.g.* SBC at 11; Verizon at 24. That the RBOCs can find a Congressional mandate for parity in the regulation of broadband services in a phrase buried in the definitional subparagraph of a provision added to the Act as a footnote is truly remarkable. Consistent with principles of statutory construction, Congress uses the language of command if it wants the Commission to take a particular action. It does not impose stealth mandates. *See e.g.*, Section 332(c)(1) to the Act, 47 USC §332(c)(1) in which Congress explicitly directed the Commission to treat all providers of commercial mobile services as common carriers. Plainly, the language that the RBOCs rely upon here does not even come close to being command language. As stated, the language is part of a definition and simply cannot be read as imposing any requirement upon the Commission. Thus the Commission would invite

legal error if it were to accept the RBOC's argument that a Congressional "mandate" for parity in regulation of broadband providers is embodied in Section 706.⁸

Verizon also argues that regulatory parity is required by "the equal protection component of the Fifth Amendment's Due Process Clause." Verizon at 24. But for Verizon to prevail here it must demonstrate that there is not "any reasonably conceivable state of facts that could provide a rational basis" for disparate treatment of the RBOCs *vis-à-vis* the cable companies. *FCC v. Beach Communications, Inc.*, 113 S.Ct. 2096, 2098 (1993). *See also Heller v. Doe by Doe*, 133 S.Ct. 2637, 2642 (1993) ("[A] classification cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate government purpose."). As stated, the continued application of the *Computer Inquiry* safeguards to the RBOCs is justified for a number of reasons, including the need to enable intramodal wireline competition and thereby help meet one of major goals of the 1996 Telecom Act of breaking apart the RBOCs' bottleneck control of last mile facilities. *See* WorldCom/Comptel/ALTS at 52-53. Because such justification provides the necessary rational

⁸ SBC (at 12) argues that the Court's decision in *Southwestern Bell Telephone Company v. FCC*, 19 F.3d 1475 (D.C. Cir. 1994) requires regulatory parity since, according to SBC, the Court held that the Commission has "a duty to apply a functional approach that treats all services alike and not to make distinctions based on the identity of the provider or the technology used." This case, however, dealt with the issue of whether the Commission could impose Title II regulation on every activity of a common carrier. In particular, the Court examined whether the Commission met the standards for determining common carriage as articulated by the Court in *National Association of Regulatory Utility Commissioners v. FCC*, 533 F.2d 601, 608-09 (D.C. Cir. 1976) with respect to the Southwestern Bell Telephone's provision of dark fiber. The Court found that the Commission had not done so because it did not find that Southwestern Bell held itself out to provide dark fiber indifferently or that Southwestern Bell was legally compelled to do so. The case had nothing to do with the issue of regulatory parity and SBC's reliance on it to support SBC's regulatory parity claims is wholly misplaced.

basis for differences in regulatory treatment, Verizon's complaint that it will be denied equal protection under the Constitution if the Commission does not scrap the *Computer Inquiry* safeguards is totally without merit.

Verizon also raises what has become the rather routine RBOC argument in proceedings such as this one. It claims that its First Amendment free speech rights are violated by the continued application of common carrier regulation, including line sharing, to its provision of its broadband services. Verizon at 27-29. *See also* SBC at 28 which claims in passing and without any discussion that continued application of the *Computer Inquiry* safeguards to the RBOCs raises First Amendment concerns. It is ironic that Verizon and to a much lesser extent SBC ask the Commission to abolish *Computer II* and *Computer III* obligations on First Amendment grounds. "It is a purpose of the First Amendment to achieve 'widest possible dissemination of information from diverse and antagonistic sources'." *United States v. AT&T*, 673 F. Supp. 525, 585 (D.D.C. 1987) quoting *Associated Press v. United States*, 65 S. Ct. 1416, 1424 (1945). This diversity principle which "has been repeatedly recognized by the Supreme Court," *id.* at 585 and fn. 270, is clearly advanced by continuation of the *Computer II* unbundling and nondiscrimination safeguards, since such safeguards will enable end users to have the widest possible array of ISPs from which to choose to obtain their information. In contrast, the elimination of these safeguards would limit customer choice, since the RBOCs would be able to restrict end user Internet access service to their own affiliated ISP. In short, *Computer II* regulation does not prevent the RBOCs from talking with their customers; it simply prevents the RBOCs from exercising bottleneck control over last-mile facilities to limit the free speech rights of their customers. Verizon's and SBC's First Amendment argument here should be summarily rejected.

V. THE RBOC CLAIM THAT THEIR PROVISION OF STANDALONE BROADBAND TRANSMISSION CAPACITY IS PRIVATE CARRIAGE CANNOT WITHSTAND SCRUTINY.

In its Initial Comments (at 15-18), Sprint explained that the offering of standalone broadband transmission capacity, even to a limited class of customers, is a common carriage service and could not, consistent with relevant precedent, be classified as private carriage. Thus, Sprint stated that the Commission should reject Verizon's proposal for the Commission to declare RBOC provision of broadband transmission services to be private carriage. *See also* AT&T at 24 ("The Commission simply has no authority to exempt the Bell's common carrier broadband services from Title II regulation by declaring them to be 'private' carriage"; WorldCom/Comptel/ALTS at 68, quoting *Frame Relay Order*, 10 FCC Rcd at 13724 (¶52) ("A carrier cannot vitiate its common carrier merely by entering into private contractual relationships with [its] customers'").

Nothing in the comments of the RBOCs justifies a finding that their offering of broadband transmission capacity constitutes private carriage. None of the RBOCs allege that their provision of standalone broadband transmission services involves an offering of unique facilities for which there is no general demand and which are designed to meet the highly specialized needs of a particular customer. *See* AT&T at 23. Nor could they, since broadband transmission facilities, *e.g.*, T-1s, DS-1s and OCNs, have long been offered on a common carrier basis, and demand for broadband transmission, including xDSL enabled facilities, is widespread.

However, the RBOCs do raise "unique" arguments in seeking to convince the Commission to classify their broadband offerings as private carriage. Verizon, for example, not only continues to argue that market power is the determinant of whether a carrier is providing a service as a common carrier or in private carriage, it also goes even further by claiming that the

only purpose of Title II is to "constrain perceived market power on the part of local telephone companies in the narrowband voice world of days gone by." Verizon at 12. Leaving aside the fact that the RBOCs' bottleneck control of last mile facilities over which their broadband services are being provided enable the RBOCs to exercise significant market power, Verizon's notion that a finding of common or private carriage turns on market power is simply incorrect. Sprint at 16-17; AT&T at 22. Moreover, there is absolutely no language in Title II or any case precedent to support Verizon's claim that the Commission's regulatory power under that Title is limited to the provision of voice services provided over narrowband facilities. In fact, the courts have long recognized that the Commission Title II regulatory powers are not confined to a particular set of circumstances or, as Verizon would have it, to a particular type of service provided over a particular type of facility, but are sufficiently flexible to enable the Commission to adapt to "the dynamic and rapidly changing nature of the communications industry." *Competitive Carrier Rulemaking*, 85 FCC 2d 1, 12 (¶29) (1980).

Qwest (at 15-16) argues that the FCC decision in allowing NorLight to operate a fiber optic network in private carriage, *NorLight, Request for Declaratory Ruling*, 2 FCC Rcd 132 (1987), compels a finding that the RBOCs should be allowed to provide broadband transmission facilities on a private carriage basis. The decision in *NorLight*, however, was based on a set of factors none of which are applicable to the RBOCs' offering of standalone broadband transmission facilities. In particular, NorLight was formed by several utility companies in Wisconsin and Minnesota to build and operate an interstate communications network for the provision of voice, data, and video services to its parent companies and other users, primarily interexchange carriers. The main purpose of Norlight's network was to meet the internal communications needs of its parent utilities and it was designed to the utilities' particularized

specifications. Only excess capacity was to be offered to users whose operations were compatible with these special features. And, "because the compatibility of the system users [was] crucial to the communications needs of the utility companies, NorLight [was] not in a position to hold itself out indiscriminately to the public in leasing the network's excess capacity." *Id.* at 135 (¶23). Plainly, none of these factors are present in the provision of standalone broadband transmission at issue here, and the FCC's *NorLight* decision is of no precedential value.

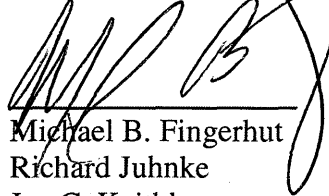
At bottom, the private carriage arguments of the RBOCs amount to nothing more than a plea for the Commission to reclassify what are indisputably common carrier services as private carriage. Such "reclassification" would enable the RBOCs to assert the right to deny competitors access to their bottleneck last-mile facilities directly or engage in discriminatory pricing so as to make it very difficult, if not impossible, for viable intramodal competition to develop. As the comments of Sprint and others have demonstrated, the requirements of Title II and the competitive goals of the Act are not so easily evaded.

VI. CONCLUSION.

Sprint respectfully requests that any Commission decision in this proceeding be consistent with Sprint's positions as set forth in its Initial Comments and as set forth above.

Respectfully submitted,

SPRINT CORPORATION

A handwritten signature in black ink, appearing to read "MBF", is written over a horizontal line.

Michael B. Fingerhut

Richard Juhnke

Jay C. Keithley

401 9th Street NW, Suite 400

Washington, D.C. 20004

(202) 585-1909

Its Attorneys

July 1, 2002

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **REPLY COMMENTS OF SPRINT CORPORATION** was sent by electronic mail and United States first-class mail, postage prepaid on this the 1st day of July, 2002 to the parties on the attached list.


Christine Jackson

July 1, 2002

Stephen L. Earnest, Esq.
Richard M. Sbaratta, Esq.
BellSouth Corporation
Suite 4300
675 West Peachtree Street, NE
Atlanta, GA 30375

Thomes Jones, Esq.
Christie Shewman, Esq.
Counsel for Time Warner Telecom
Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036

Brett A. Perlman, Commissioner
Rebecca Klein, Commissioner
Public Utility Commission of Texas
1701 N. Congress Avenue
PO Box 13326
Austin, TX 78701-1402

Steven T. Nourse, Esq.
Public Utilities Section
Public Utilities Commission of Ohio
180 E. Broad Street, 7th Floor
Columbus, OH 43215

Nancy J. Bloch
Executive Director
National Association of the Deaf
814 Thayer Avenue
Silver Spring, MD 20910-4500

Cheryl A. Tritt, Esq.
Charles H. Kennedy, Esq.
David Munson, Esq.
Counsel for Monet Mobile Networks, Inc.
Morrison & Foerster LLP
Suite 5500
2000 Pennsylvania Ave., NW
Washington, DC 20006

John P. Janka, Esq.
Richard R. Cameron, Esq.
Counsel for Hughes Network Systems, Inc.
Latham & Watkins
555 11th Street, NW, Suite 1000
Washington, DC 20004

Joseph W. Waz, Jr., Esq.
Thomas R. Nathan, Esq.
Comcast Cable Communications, Inc.
1500 Market Street
Philadelphia, PA 19102

James R. Coltharp, Esq.
Comcast Corporation
Suite 500
2001 Pennsylvania Avenue, NW
Washington, DC 20006

James L. Casserly, Esq.
Lisa N. Anderson, Esq.
Counsel for Comcast Corporation
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, P.C., Suite 900
701 Pennsylvania Ave., NW
Washington, DC 20004

Richard S. Whitt, Esq.
Kimberly A. Scardino, Esq.
Henry G. Hulquist, Esq.
WorldCom, Inc.
1133 19th Street, NY
Washington, DC 20036

Mark D. Schneider, Esq.
Marc A. Goldman, Esq.
Leondra R. Kruger, Esq.
Jenner & Block, LLC
601 13th Street, NW
Washington, DC 20005

Carol Ann Bischoff, Esq.
Jonathan Lee, Esq.
CompTel
1900 M Street, NW, Suite 800
Washington, DC 20036

Jonathan Askin, Esq.
Counsel for CompTel
Association for Local Telecommunications
Services
888 17th Street, NW, Suite 900
Washington, DC 20006

Jonathan E. Nuechterlein, Esq.
Lynn R. Charytan, Esq.
Jonathan H. Siegelbaum, Esq.
Wilmer, Cutler & Pickering
2445 M Street, NW
Washington, DC 20037

Sharon J. Devine, Esq.
Craig Brown, Esq.
Counsel for Qwest
Qwest Communications
1020 19th Street, NW
Washington, DC 20036

Michael E. Glover, Esq.
Edward Shakin, Esq.
Verizon
Suite 500
1515 North Courthouse Road
Arlington, VA 22201-2909

Mark L. Evans, Esq.
J.C. Rozendaal, Esq.
Michael K. Kellogg, Esq.
Counsel for SBC
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1615 M St., NW, Suite 400
Washington, DC 20036

Paul K. Mancini, Esq.
SBC Communications Inc.
Room 1262
175 E. Houston
San Antonio, TX 78205

Gary L. Phillips, Esq.
Jeffrey A. Brueggeman, Esq.
SBC Communications Inc.
1401 I Street, NW, Suite 1100
Washington, DC 20005

Gary M. Cohen, Esq.
Lionel B. Wilson, Esq.
Ellen S. Levine, Esq.
*Counsel for the People of the State of
CA and the PUC of CA*
505 Van Ness Avenue
San Francisco, CA 94102

Lawrence E. Sarjeant, Esq.
Indra Sehdev Chalk, Esq.
United States Telecom Association
1401 H Street, NW, Suite 600
Washington, DC 20005

Myra Karegianes, Esq.
John P. Kelliher, Esq.
Michael J. Lannon, Esq.
Illinois Commerce Commission
160 N. LaSalle, Suite C-800
Chicago, Illinois 60601

Peter M. Bluhm
Director of Regulatory Policy
Vermont Public Service Board
112 State Street, Drawer 20
Montpelier, VT 05620-2701

Jeffrey Blumenfeld, Esq.
Christy C. Kunin, Esq.
Elise P.W. Kiely, Esq.
Counsel to Covad Communications Co.
Gray Cary Ware & Friedenrich, LLP
1625 Massachusetts Ave., NW, Suite 300
Washington, DC 20036

Hon. Richard L. Brodsky, Member
New York State Assembly
Legislative Office Building #422
Albany, NY 12248

Charles C. Hunter, Esq.
Catherine M. Hannan, Esq.
*Counsel for Association Of Communications
Enterprises*
Hunter Communications Law Group, P.C.
1424 16th Street, NW, Suite 105
Washington, DC 20036

Anthony Mendoza, Esq.
Minnesota Department of Commerce
85 7th Place East, Suite 500
St. Paul, Minnesota 55101-2198

Jason Oxman, Esq.
Covad Communications Company
600 14th Street, NW, Suite 750
Washington, DC 20005

Mark C. Rosenblum, Esq.
Lawrence J. Lafaro, Esq.
Stephen C. Garavito, Esq.
AT&T Corp.
Room 1135L2
295 North Maple Avenue
Basking Ridge, NJ 07920

Cheryl A. Leanza, Esq.
Andrew J. Schwartzman, Esq.
Harold Feld, Esq.
Media Access Project
1625 K St., NW, Suite 1118
Washington, DC 20006

Karen Peltz Strauss, Policy Consultant
Gregg C. Vanderheiden, Co-Principal
Investigator
RERC on Telecommunications Access
c/o Gallaudet University
800 Florida Avenue, NE
Washington, DC 20002

Paul Glist, Esq.
Laura Moore, Esq.
Danielle Frappier, Esq.
Cole, Raywid & Braverman, LLP
1919 Pennsylvania Ave., NW, Suite 200
Washington, DC 20006

James Bradford Ramsay, Esq.
Sharla Barklind, Esq.
National Association of Regulatory
Utility Commissioners
1101 Vermont Ave., NW, Suite 200
Washington, DC 20005

David Gabel, PhD
Mark Kosmo, PhD
Eric Kodjo Ralph, PhD
Gabel Communications
31 Stearns Street
Newton, Massachusetts 02159

Philip F. McClelland
Senior Assistant Consumer Advocate
Joel H. Cheskis
Shaun A. Sparks
Assistant Consumer Advocates
Office of Consumer Advocate
555 Walnut St., 5th Floor, Forum Place
Harrisburg, PA 17101-1923

Stephen Ward
Public Advocate
State of Maine
112 State House Station
Augusta, Maine 04333

Michael J. Travieso
People's Counsel
Maryland Office of People's Counsel
6 St. Paul Street, Suite 2102
Baltimore, MD 21202

Regina Costa, Director
Telecommunications Research
The Utility Reform Network
711 Van Ness Avenue, Suite 350
San Francisco, CA 94102

Lawrence G. Malone, General Counsel
Brian Ossias, Assistant Counsel
Public Service Commission of The
State of New York
Three Empire State Plaza
Albany, NY 12223-1350

Jonathan E. Canis, Esq.
David A. Konuch, Esq.
Randall W. Siefers, Esq.
Counsel for KMC Telecom & Nuvox
Kelley Drye & Wareen LLP
1200 19th St., NW, Suite 500
Washington, DC 20036

Bruce Bullock, Esq.
Business Telecon, Inc.
4300 Six Forks Road
Raleigh, NC 27609

Pamela L. Hintz, Esq.
CTC Communications Corp.
360 Second Avenue
Waltham, MA 02451

Wanda Montano, Esq.
US LEC Corp.
Three Morrocroft Centre
6801 Morrison Blvd.
Charlotte, NC 28211

John T. Nakahata, Esq.
Fred Campbell, Esq.
Counsel for General Communications, Inc.
Harris, Wiltshire & Grannis, LLP
1200 18th St., NW, Suite 1200
Washington, DC 20036

Larry Bianucci, Esq.
Big Planet, Inc.
75 West Center Street
Provo, UT 84601

Mark Jenn, Esq.
TDS Telecommunications Corp.
301 South Westfield Road
Madison, WI 53717

Trey Judy, Esq.
Madison River Management LLC
PO Box 430
Mebane, NC 27302

Kevin Albaugh, Esq.
North Pittsburgh Telephone
Company/Penn Telecom Inc.
4008 Gibsonia Road
Gibsonia, PA 15044

Claude Stout
Executive Director
Telecommunications for the Deaf, Inc.
8630 Fenton Street, Suite 604
Silver Spring, MD 20910-3803

Steven N. Teplitz, Esq.
AOL Time Warner Inc.
800 Connecticut Avenue, NW
Washington, DC 20006

Donna N. Lampert, Esq.
Michael J. Jacobs, Esq.
AOL Time Warner Inc.
Lampert & O'Connor, P.C.
1750 K St., NW, Suite 600
Washington, DC 20006

Linda Aerni, President
Community Internet systems, Inc.
Box 159
Columbus, NE 68602-0039

Paul Schumacher, Esq.
Community Internet systems, Inc.
Box 122
Columbus, NE 68602-0039

John Leslie, Secretary
New Hampshire ISP Association
PO Box 341
Londonderry, NH 03053

Barry Hassler, Treasurer
Ohio Internet Service Providers Asso.
2332 Grange Hall Road
Bear Creek, OH 45431

David Robinson, Vice President
Texas Internet Service Providers Asso.
PO Box 328
Bastrop, TX 78602

Gary Gardner, Executive Director
Washington Association of Internet
Service Providers
9445 37th Ave., SW
Seattle, WA 98126

Russell I. Zuckerman, Esq.
Francis D.R. Coleman, Esq.
Richard E. Heater, Esq.
Mpower Communications Corp.
175 Sully's Trail, Suite 300
Pittsford, NY 14534

Julia O. Strow, Esq.
Brian Musselwhite, Esq.
Cbeyond Communications, LLC
320 Interstate North Pkwy, SE, Suite 300
Atlanta, GA 30339

Dorothy Attwood, Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Cathy Carpino, Esq.
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Michelle Carrey, Esq.
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Qualex International
Portals II Building
Room C4-B402
445 12th Street, SW
Washington, DC 20554

Thomas M. Koutsky, Esq.
Z-Tel Communications, Inc.
1200 19th Street, NW, Suite 500
Washington, DC 20036

Albert E. Cinelli, Esq.
Robert A. Bye, Esq.
Cinergy Communications Company
8833 Bond Street
Overland Park, KS 66214

David R. Conn, Esq.
Bradley R. Kruse, Esq.
McLeodUSA Telecommunications
Services, Inc.
6400 C Street, SW
Cedar Rapids, IA 52406-3177

Russell M. Blau, Esq.
Patrick J. Whittle, Esq.
Swidler Berlin Shereff Friedman, LLP
3000 K St., NW, Suite 300
Washington, DC 20007

Claude Stout, Esq.
Telecommunications for the Deaf, Inc.
8630 Fenton Street, Suite 604
Silver Spring, MD 20910-3803

Jams Baller, Esq.
Sean A. Stokes, Esq.
American Public Power Asso.
The Baller Herbst Law Group, P.C.
2014 P Street, NW
Washington, DC 20036

David W. Zesiger, Executive Director
The Independent Telephone and
Telecommunications Alliance
1300 Connecticut Avenue, NW, Suite 600
Washington, DC 20036

Karen Brinkmann, Esq.
Richard R. Cameron, Esq.
Latham & Watkins
*Counsel for The Independent Telephone and
Telecommunications Alliance*
555 11th Street, NW, Suite 1000
Washington, DC 20004

Stuart Polikoff, Esq.
Stephen Pastorkovich, Esq.
Jeffrey Smith, Esq.
OPASTCO
21 Dupont Circle NW
Washington, DC 20036

Margot Smiley Humphrey, Esq.
*Counsel for National Rural Telecom
Association*
Holland & Knight LLP, Suite 100
2099 Pennsylvania Avenue
Washington, DC 20006

Paul M. Schudel, Esq.
Counsel for Nebraska Independent Companies
Woods & Aitken LLP
301 South 13th Street, Suite 500
Lincoln, Nebraska 68508

Gerard J. Duffy, Esq.
Counsel for The Western Alliance
Blooston, Mordkofsky, Jackson Duffy
& Prendergast
2120 L Street, NW, Suite 300
Washington, DC 20554

L. Marie Guillory, Esq.
Jill Canfield, Esq.
NTCA
4121 Wilson Blvd., 10th Floor
Arlington, VA 22203